

1992

Salt Lake City v. Paul Woolley : Brief of Appellant

Utah Court of Appeals

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Recommended Citation

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DOCKET NO. 920477CA

IN THE COURT OF APPEALS OF THE STATE OF UTAH

SALT LAKE CITY,

Plaintiff/Respondent,

v.

PAUL WOOLLEY,

Defendant/Appellant.

:

:

:

:

:

92-0477-GH

Case No. [REDACTED]
Priority No. 2

BRIEF OF APPELLANT

Appeal from a judgment and conviction for Battery, a Class B misdemeanor, in violation of Salt Lake City Ordinance \$11-08-020, in the Third Circuit Court in and for Salt Lake County, Salt Lake Department, the Honorable Michael I Hutchings, Judge, presiding.

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DEC 17 1992

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

SALT LAKE CITY,	:	
Plaintiff/Respondent,	:	
v.	:	
PAUL WOOLLEY,	:	Case No. 924077-CA
Defendant/Appellant.	:	Priority No. 2

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IN THE COURT OF APPEALS OF THE STATE OF UTAH

SALT LAKE CITY,	:	
Plaintiff/Respondent	:	
v.	:	
PAUL WOOLLEY	:	Case No. 920477-CA
Defendant/Appellant	:	Priority No. 2

JURISDICTIONAL STATEMENT

Jurisdiction is conferred on this Court pursuant to Rule 26(2)(a), Utah Rules of Criminal Procedure and Utah Code Ann. §78-2a-3(2)(d).

STATUTES AND CONSTITUTIONAL PROVISIONS

The Statutes and Constitutional Provisions are provided in Addendum A:

U.S. Constitution Amendment V

U.S. Constitution Amendment XIV

Utah Constitution Article I, Section 7, Salt Lake City Ordinance §11-08-020.

STATEMENT OF THE ISSUES

1. Were the statements made by plaintiff-respondent during opening statements asking the jury to consider the role of the government and what it means to the jury prejudicial amounting to prosecutorial misconduct?

2. Was there insufficient evidence to establish that the defendant committed a battery?

STATEMENT OF THE CASE

Following a jury trial held on June 22, 1992, a four person jury convicted appellant of Battery, a Class B misdemeanor. Appellant was sentenced the same day to serve six months in the Salt Lake County Jail, forthwith, with credit for time served previously related to this offense. This appeal arises out of that judgment and conviction.

STATEMENT OF FACTS

A jury trial was held on June 22, 1992. During open statement the City Prosecutor informed the four person jury that she represents the government. At that point the prosecutor then asked the jury to, "stop and think about what the government means to you. Particularly in a case like this." T.3. The prosecutor then added that the government represents the jury. At that point an objection was made by defense counsel. A side bar was requested and after the side bar, the trial judge sustained the objection. The prosecutor continued her opening by stating that she represents Salt Lake City and that she is alone at counsel table.

After Defense Counsel made her opening statement, the city called three witnesses; Mr. Sammy Knighton, Mr. Albert Ortega, and Miss Juanita Valdez. Mr. Knighton was the first witness called. He stated that he was with the victim, Miss Valdez, they had exited a UTA bus near Indiana and 1500 West. Mr. Knighton testified that he and Miss Valdez exited the bus and proceeded to walk home. He had noticed someone was behind them but could not say for sure who it

was. Mr. Knighton stated that once he and Miss Valdez reached the driveway of her home, the defendant/appellant, Mr. Woolley, approached from behind and without provocation knocked Miss Valdez to the ground and hit her on the left side of the face. T.7-8. Mr. Knighton further testified that Miss Valdez was walking on his left side and was to his left when she was struck from behind. T.12.

Mr. Ortega was then called as the City's second witness. He testified that he was inside his home when the incident occurred, and that Mr. Knighton came running in the house saying someone had just hit Miss Valdez. Mr. Ortega stated he ran outside and saw an individual leaving the yard about 50 feet away. He confronted this person, but this person looked at him with a mean and blank expression. T.15. At that point, Mr. Ortega told Mr. Knighton to call the police, and the person left. T.16. Mr. Ortega then proceeded to go to work and saw this individual heading toward a yellow house. He stopped and the individual yelled out that he was calling the police. T.16-17. Mr. Ortega waited for the police and told them how Mr. Woolley battered Miss Valdez. T.17. Mr. Ortega also informed the police that Miss Valdez was struck on the left side of the face. T.17-18.

Miss Valdez was then called to the stand. She related to the jury how she exited the UTA bus and was suddenly struck by Mr. Woolley on the right side of her face. T.20-22. She also indicated to the jury that she was on the left side of Mr. Knighton when this occurred. T.22. All three witnesses positively identified Mr.

Woolley as the person who struck Miss Valdez at the scene of the incident and also identified Mr. Woolley at trial.¹

Mr. Woolley took the stand in his own defense. He related that he had been on the same UTA bus with Miss Valdez and Mr. Knighton. T.23-34. He stated that when the bus came to a stop, Miss Valdez and Mr. Knighton were slow to exit and slow walking down the street. T.24. Mr. Woolley indicated to the jury that he was angry because he was late, but that he was angry at himself. T.24, 27. Mr. Woolley testified that he walked around Miss Valdez and Mr. Knighton and proceeded on his way. T.24, 27. He then noticed two men were following him as he walked away. He sped up his pace in an effort to get away. The men followed him at which point Mr. Woolley was frightened because his brother had been robbed in that area, so he ran to a neighbor's house to call the police. T.24-25.

At the closed of the defense case, the prosecutor recalled Mr. Knighton to the stand. Mr. Knighton testified to the inconsistencies between his and Miss Valdez's testimony on which side of the face Miss Valdez was hit. T.29. Mr. Knighton recanted his testimony that Miss Valdez was on the left side of him but was insistent that she was hit on the left side of her face. T.29, 34. Mr. Knighton further testified he may be confused on this issue but was certain Mr. Woolley did strike Miss Valdez.

The case was submitted to the jury and the jury found Mr. Woolley guilty of Battery. The Honorable Michael L. Hutchings

¹ It should be noted that both Miss Valdez and Mr. Knighton are slightly handicapped with minor learning disabilities.

sentenced Mr. Woolley to 6 months in the Salt Lake County Jail forthwith with credit for time already served.

SUMMARY OF THE ARGUMENT

The statements made by the city prosecutor during opening statement asking the jury to consider the role of the government and what it means to the jury was prejudicial and violated Mr. Woolley's right to a fair trial by an impartial jury.

The purpose of opening statements is to apprise the jury of what counsel intends to prove in its case in chief. The statements made by the city prosecutor were entirely inappropriate and was a deliberate attempt to bias the jury against Mr. Woolley, thereby violating his right to have a trial by an impartial jury. The statements were an attempt to sway the jury away from the presumption of innocence and shifted the burden of proof on the defense and were, in itself, insurmountable prosecutorial misconduct. Furthermore, there was insufficient evidence to establish that Mr. Woolley committed the crime of Battery when the testimony given by the city's three witnesses was too inconsistent as to which side of the face Miss Valdez was struck.

ARGUMENT

POINT I

STATEMENTS MADE BY THE CITY PROSECUTOR DURING OPENING STATEMENTS ASKING THE JURY TO CONSIDER THE ROLE OF GOVERNMENT AND WHAT IT MEANS TO THE JURY WAS PREJUDICIAL AND AMOUNTS TO PROSECUTORIAL MISCONDUCT

The purpose of opening statement is to apprise the jury of

what counsel intends to prove when presenting the case-in-chief. State v. Williams, 656 P.2d 450 (Utah 1982). The primary purpose of any opening statement is to provide familiarity and a general overview for the jury about the case.

In the case at hand, the city prosecutor, in opening statement, asked the jury to consider the role of the government and what it meant to each juror. Such a statement has no bearing on providing a general overview to the jury and would have no effect other than to prejudice the jury. However, the sole question before this Court is whether the remarks made by counsel were so objectionable as to merit a reversal.

In State v. Troy, 688 P.2d 483 (Utah 1984) the Utah Supreme Court upheld a two prong standard set out in State v. Valdez, 513 P.2d 422 (Utah 1973). The standard provides that to merit reversal, the remarks must, (1) call to the attention of the jury, matters which they would not be justified in considering in determining their verdict and, (2) under the circumstances of the particular case, influence the jury. See, State v. Troy, 688 P.2d at 486. State v. Emmett, 184 Utah Adv. Rep. 34, 35 (Utah 1992).

In applying step one, it is evident that the prosecutor was calling attention to matters outside the evidence in referring to the government and what the government means to the jury. The role of the government and what it means to the jury has no place for consideration when a jury deliberates to reach a verdict. The only effect that such statements could have is to suggest to the jury that they owe the City of Salt Lake, through its prosecutor, a

special duty for what the city does for it's residence, thereby creating bias for the prosecutor and in the least shifting the burden of proof to the defense. Thus, it is apparent that step one has been clearly met in that these comments provide no information for the jury of what the prosecutor intended to prove in its case-in-chief.

Step two requires that the comments probably influenced the jury. Step two is more difficult to answer and involves consideration of the totality of all the circumstances in each case. In making such a consideration the Utah Supreme Court has held that the evidence of defendant's guilt must be closely scrutinized. Troy at 486.

In State v. Troy, the Court held that in cases where the proof of a defendant's guilt is not strong, the Court must closely scrutinize the misconduct of the prosecutor.

If the circumstances of the jurors is based on their weighing conflicting evidence or evidence susceptible of different interpretations, there is a greater likelihood that they will be improperly influenced through remarks of counsel, ...in such cases, the jurors may be searching for guidance in weighing and interpreting the evidence. They may be especially susceptible to influence, and a small degree of influence may be sufficient to affect the verdict. Id. See also State v. Emmett, 184 Utah Adv. Rep. at 35.

In the case before this Court, there was not compelling proof of defendant's guilt. The City's three witnesses were in direct conflict with one another and the facts, as laid out at trial, were susceptible to different interpretations, making the prosecutor's comments more likely to influence the jury. Mr.

Knighton originally testified that Miss Valdez was walking next to his left side and that she was struck on the left side of her face. However, Miss Valdez insisted that she was struck on the right side of the face while she was standing on Mr. Knighton's left side. If this is accurate, it would be virtually impossible to strike Miss Valdez on the right side of the face, from behind, without hitting Mr. Knighton. This testimony is perplexing at best and in the least, confused the jury, therefore, the likelihood that the prosecutor's comments, although small in degree, may have sufficiently influenced the jury in reaching their verdict. Since the evidence of the actual battery was in conflict, it is probable that the jury was influenced by the prosecutor's opening statements. Even though the trial court attempted to correct the error, the potential harm and the probability of influence was too great to correct and the damage to Mr. Woolley's trial was complete.

This damage, done by the prosecutor's statements, violated Mr. Woolley's right to a fair trial and to due process of law as guaranteed by the United States and Utah Constitution. U.S. Constitution, amendments V and XIV, Utah Constitution, article 1, S 13.

The United States Constitution in amendments V and XIV as well as article I, section 14 of the Utah Constitution, provides that each individual is entitled to the due process of law. The statements made by the prosecutor made it virtually impossible for Mr. Woolley to receive due process of law during his trial.

Accordingly, the case at hand meets the two prong test and the case should be remanded for a new trial.

POINT II

THERE WAS INSUFFICIENT EVIDENCE TO CONVICT THE DEFENDANT OF BATTERY.

It is well established that in order to reverse a jury's conviction for insufficient evidence, the evidence, taken in light most favorable to the jury's verdict, must be sufficiently inconclusive or inherently improbably that reasonable minds must have entertained reasonable doubt that the defendant committed the crime. State v. Petree, 659 P.2d 433, (Utah 1983).

In Petree, the Court concluded that once evidence is drawn in the light most favorable to the verdict, it is the reviewing court's obligation to "stretch evidentiary fabric as far as it will go...But this does not mean the court can take a speculated leap across a remaining gap in order to sustain a verdict." Id. at 445. See also State v. James, 819 P.2d 781 (Utah 1991). In other words, the evidence against the defendant must cover any gap between the presumption of innocence and the proof of guilt beyond a reasonable doubt. See State v. Boone, 810 P.2d 930, 936 (Utah App. 1991).

The query now becomes whether the City presented sufficient evidence from which a jury could find beyond a reasonable doubt that the defendant committed a battery. Defendant was convicted under Salt Lake City ordinance §11.08.020 which provides:

A battery is any willful and unlawful use of force or violence upon the person of another.

In an effort to "marshal the evidence," appellant brings to this Court the following facts. The City Prosecutor called three witnesses to present it's case-in-chief. Mr. Knighton, who testified he was next to the victim when the incident occurred, stated that Miss Valdez, the victim, was walking on his left hand side when the defendant approached from behind and struck her on the left side of the face. T.8, 12.

Mr. Ortega, the victim's stepbrother, also testified that he confronted a man who he identified as the defendant, and asked him why he had hit his sister on the left side of her face. T.15, 18.

The victim, Miss Valdez, testified that she and Mr. Knighton were walking home from the bus stop when the defendant came up from behind on her left side and hit her on the right side of her jaw. T.21-22.


Appellant contends that this evidence was insufficient to sustain a conviction. The testimony given at trial by the three witnesses was too inconsistent to constitute a conviction beyond a reasonable doubt. Appellant contends that due to the conflict with the victim's testimony and the other two witnesses that she was struck on the right side of the face rather than the left side, that it would be unreasonable for a jury to conclude beyond a reasonable doubt that Mr. Woolley committed a battery. Since such contradictory testimony existed at trial, there does exist a substantial gap between the presumption of innocence and the proof of guilt.

Viewing the evidence in light most favorable to the jury's verdict, it is evident, by the contradictory statements, that the evidence is inconclusive and inherently improbable to the degree that no reasonable mind could have logically concluded that Mr. Woolley committed the crime of battery. Therefore, appellant moves this court to reverse and remand these proceedings back to the lower court.

CONCLUSION

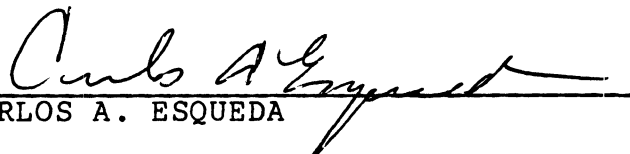
For any and all of the foregoing reasons, appellant, Paul Woolley, respectfully requests this Court to reverse his conviction and remand this case for a new trial or dismissal.

DATED this 15th day of December, 1992.


CARLOS A. ESQUEDA
Attorney for Appellant

CERTIFICATE OF DELIVERY

I, CARLOS A. ESQUEDA, hereby certify that I have caused eight copies of the foregoing to be delivered to the Utah Court of Appeals, 400 Midtown Plaza, 230 South 500 East, Salt Lake City, Utah 84102, and four copies to the Salt Lake City Prosecutor's Office, 451 South 200 East, Salt Lake City, Utah 84111 this 15th day of December, 1992


CARLOS A. ESQUEDA

DELIVERED/MAILED this _____ day of December, 1992.

ADDENDUM A

AMENDMENT V

Const.
nd 5

[Criminal actions — Provisions concerning —
Due process of law and just compensation
clauses.]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Section

1. [Citizenship — Due process of law — Equal protection.]
2. [Representatives — Power to reduce appointment.]
3. [Disqualification to hold office.]
4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.]
5. [Power to enforce amendment.]

Section 1. [Citizenship — Due process of law — Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah Const. Art. I Sec. 7

Sec. 7. [Due process of law.]

No person shall be deprived of life, liberty or property, without due process of law.

1896